

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

July 12, 2005

The Rhode Island Ethics Commission held its 13th meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, July 12, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair Frederick K. Butler

Patricia M. Moran, Vice Chair Barbara Binder

James C. Segovis Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:05 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on June 21, 2005. Upon motion made by Commissioner Binder, and duly seconded by Commissioner Butler, it was

VOTED: To approve the minutes of the Open Session held on June 21, 2005.

AYES: James Lynch, Sr., James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

ABSTENTION: Patricia M. Moran.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of Anthony J. Silva, the Chief of the Cumberland Police Department. The petitioner was present. Staff Attorney Gramitt presented the Commission Staff recommendation. In response to Commissioner Cheit, the petitioner stated that his participation in the negotiation process is only advisory. In response to Chair Lynch, the petitioner replied that he was not aware of whether other department heads in the town were similarly participating in the negotiation process. He informed that he could speculate based on his experience that other department heads associated with finance would be involved.

In response to Chair Lynch, the petitioner stated that the negotiation

process will not impact his wages, but will impact two benefits he receives. He informed that he has an individual employee contract with the Town of Cumberland that provides that two of his benefits will be the same as those of the Cumberland Police. He informed that these two impacted benefits are his medical benefits upon retirement and his holidays. The petitioner pointed out that he will recuse himself from participating in any discussions regarding these two benefits. The petitioner further informed that while the negotiating team can proceed without his involvement, he can provide them with useful information about the impact of the contract on the police department and management issues. The petitioner pointed out that he will eventually have to enforce the provisions of this contract.

Upon motion made by Commissioner Moran, duly seconded by Commissioner Binder, it was

VOTED: To issue an advisory opinion, attached hereto, to Anthony J. Silva, the Chief of the Cumberland Police Department.

AYES: Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

NOES: James Lynch, Sr.

The next advisory opinion was that of Mary E. Bray, a member of the Pawtucket City Council. The petitioner was present. Staff Attorney

Gramitt presented the Commission Staff recommendation.

Upon motion made by Commissioner Butler, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Mary E. Bray, a member of the Pawtucket City Council.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of Peter Fogarty, CPA, CFE, a member of the Smithfield Zoning Board of Review. The petitioner was not present, however, Edmund L. Alves, Jr., the Town Solicitor and chief legal advisor for the town of Smithfield, was present.

At the outset, Commissioner Segovis informed the Commission that he knew Mr. Alves because of his work with the Town of Smithfield and that he also probably knew others in the Town who may be impacted by this advisory opinion. He pointed out, however, that he did not know Mr. Alves personally and that he can be impartial in this matter. Staff Attorney Leyden presented the Commission Staff recommendation. Mr. Alves informed that the petitioner supported the recommendation.

Upon motion made by Commissioner Moran, duly seconded by

Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Peter Fogarty, CPA, CFE, a member of the Smithfield Zoning Board of Review.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of David L. Greene, a member of the Smithfield Zoning Board of Review. The petitioner was not present, however, Edmund L. Alves, Jr., the Town Solicitor and chief legal advisor for the town of Smithfield, was present. Staff Attorney Leyden presented the Commission Staff recommendation. Mr. Alves informed that the petitioner supported the recommendation.

Upon motion made by Commissioner Binder, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David L. Greene, a member of the Smithfield Zoning Board of Review.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of David M. Tassoni, a member of the Smithfield Zoning Board of Review. The petitioner was not present, however, Edmund L. Alves, Jr., the Town Solicitor and chief legal advisor for the town of Smithfield, was present. Staff Attorney Leyden presented the Commission Staff recommendation. Mr. Alves informed that the petitioner supported the recommendation.

Upon motion made by Commissioner Binder, duly seconded by Commissioner Moran, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David M. Tassoni, a member of the Smithfield Zoning Board of Review.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of T. Brian Handrigan, a member of the Narragansett Town Council. The petitioner was not present, however, Mark A. McSally, Esq., was present to represent him. Staff Attorney Gramitt presented a draft opinion that contained two options. In response to Commissioner Segovis, Mr. McSally informed that the petitioner had appointed members to the Boards at issue. He stated that he did not have the list of the petitioner's appointments, but he informed that not many members had changed over the years. Rather, he stated that the petitioner had participated in

reappointments. He informed that the Planning Board has five members and that only three of them pre-dated the petitioner's election. He stated that one of them is up for reappointment in 2005.

In response to Commissioner Segovis, Mr. McSally informed that the petitioner has voted on all five members of the Board at some point. Commissioner Segovis also inquired if there was a process in place that allowed the petitioner to present his plan without appearing before the Boards. Mr. McSally informed that there is no process for blind submission and that someone would have to present the plan. He informed the Commission that a plan is usually presented in one of two ways: (1) the applicant appears with his attorney and engineer and they make representations to the Board, or (2) where the plan is simple, only the applicant appears before the Board.

Mr. McSally informed that he could not represent the petitioner before the Boards as he is also the Town Solicitor. Commissioner Cheit expressed his concern that the extent of the loss to the petitioner was not provided to the Commission and that the only representation that was made regarded debt service. Mr. McSally replied that there is not much more to add and referred to the economic arguments made by Commissioner Cheit at the last meeting. He also noted that the property needs to generate more income because the current structures will not cover the mortgage on the property.

Commissioner Cheit then inquired about the exact extent of the loss.

Mr. McSally replied that he did not do an economic analysis on the property. He informed that the mortgage is for \$500,000 with only interest payments now and a balloon payment in two years. He stated that the only revenue on the property now comes from the parking lot.

In response to Commissioner Moran, Mr. McSally stated that the uses at issue are permitted by the town ordinance or were grandfathered in. He stated that the petitioner plans to place a retail venture on the first floor and a residential venture on the second floor of the structure. He also stated that these uses are not new to the area and that such mixed uses exist across the street from this property. He informed that the petitioner does not want to seek a variance or a zoning change, and reiterated that he only wants an approval of a plan incorporating the existing, permitted use for the property.

Chair Lynch stated that he cannot see a loss at all. He expressed his opinion that he sees this property as a business venture with its own inherent risks. He noted that the petitioner's public service only postpones his ability to appear before these Boards and expressed his opinion that this is only an inconvenience, not a hardship.

Commissioner Binder stated that she sees a hardship because the petitioner is seeking approval of an already permitted use and he represented that he will not make any appointments to these Boards in the future. She also noted that she sees the petitioner as a small

business man in the community and that there could be a hardship if this plan was not pursued. Commissioner Cheit inquired whether it makes a difference that this is a permitted use.

Staff Attorney Gramitt discussed the requirements of section 5(e) and noted that it does not contain an exception for a permitted use. Commissioner Moran noted that the petitioner cannot go before these Boards because he has to represent himself. Staff Attorney Gramitt pointed out that this is what section 5(e) requires and that, in the past, the Commission has allowed petitioners to do so only for ministerial acts. Commissioner Moran pointed out that other boards may have ways to consider such non-ministerial matters without an appearance requirement and noted that she has a hard time with this request as no there is no other venue for the petitioner.

Commissioner Binder reiterated that there is a vested legal right here that pre-dates the petitioner's election and that she is persuaded by the various factors particular to this request. Commissioner Segovis acknowledged that it seems like the petitioner wants to participate in a straight-forward administrative process because he is not asking to change the use of the property. He pointed out that allowing the petitioner to participate may seem like a good idea now, but may not seem so later on in hindsight. He pointed out that it seems like this request could go either way, but that the focus should be on the hardship. He stated that he is not persuaded by the petitioner's debt because the petitioner took the property while in office when interest

rates are low and did so knowing the consequences.

Commissioner Cheit agreed that there is less of a conflict when this request is viewed from the perspective of hardship. He expressed his opinion that a hardship is not simply any financial loss. He also remarked that the petitioner only presented that there was a financial loss and that a hardship should require more than a financial loss.

Chair Lynch agreed and stated that the Commission should not try to rewrite its regulations at this time. He commented that the law is clear and that the Commission can consider issuing new regulations on this issue in the future. He pointed out that he did not see a question here as no hardship was presented.

Upon motion made by Commissioner Cheit, duly seconded, it was

VOTED: To adopt Option #1.

**AYES: James Lynch, Sr., James C. Segovis, Frederick K. Butler,
and Ross Cheit.**

NOES: Patricia M. Moran and Barbara Binder.

Staff Attorney Gramitt pointed out that an advisory opinion will not be issued as five affirmative votes are needed to issue an advisory opinion. Chair Lynch noted that Option #2 remained available for a

motion. No motion was made on Option #2.

Commissioner Moran commented that there would be a hardship if the petitioner's property was not profitable and he lost everything because of it. Legal Counsel Managhan noted that the petitioner did not provide the Commission with such evidence. Commissioner Segovis pointed out that a hardship may exist if such evidence was presented.

Chair Lynch commented that the petitioner will be proceeding at his own risk without an advisory opinion. Commissioner Segovis noted the petitioner's options, stating that he can come back to the Commission again with more evidence or resign and wait a year to represent himself before these Boards. Staff Attorney Gramitt noted that the petitioner would be proceeding at his own risk because no safe harbor was granted today.

The next advisory opinion was that of Kathleen A. Ward-Bowen, an Exeter Zoning Board of Review member. The petitioner was not present. Staff Attorney Robertson informed the Commission that the petitioner had asked her to inform them that she wanted to attend this meeting, but was unable to do so because of a work obligation. Staff Attorney Robertson presented the Commission Staff recommendation.

Commissioner Binder noted that she was uncomfortable with this

request as she believed it presented an appearance of impropriety. She stated that she would not feel comfortable knowing that the sister of a witness was going to decide her case. Staff Attorney Robertson pointed out that an appearance of impropriety does not itself constitute a violation of the Code of Ethics. She also noted that advisory opinions rely on the petitioner's representations and that here the petitioner represents that her judgment will not be impaired and that her brother will not be financially impacted.

Commissioner Segovis noted that there is a judicial opinion that states that an appearance of impropriety is not a violation of the Code of Ethics. Commissioner Cheit commented that he had questions for the petitioner regarding how she is judging her brother's testimony and whether she is weighing his credibility. He expressed his opinion that there seems to be a conflict of interest.

Staff Attorney Robertson replied that the Code of Ethics defines a conflict of interest in terms of financial impact and the petitioner represented that her brother will not be financially impacted by this appeal. Legal Counsel Managhan then pointed out that section 5(a) of the Code of Ethics states that an interest for which there may be conflict is "any interest, financial or otherwise," however, section 7(a) states that such an interest is one related strictly to monetary impact. She noted that the Commissioners are constrained by the Code of Ethics.

Commissioner Cheit expressed his opinion that it is implausible that the petitioner can independently judge her brother and stated that he Commission can rely on section 5(b) of the Code of Ethics. Commissioner Moran pointed out that the petitioner may not be judging her brother in as much as she is judging the record relating to the Cease and Desist Order he issued. She commented that the petitioner's brother only recommended a Cease and Desist Order and could have done so for any number of reasons, like for loud noises or disturbing the neighbors. She stated that such an Order simply sets out a plan for how to correct such a problem and noted that the petitioner would be reviewing the Order, not her brother directly. Commissioner Cheit replied that such a question cannot be answered because the petitioner is not present.

Legal Counsel Managhan noted that section 5(b) of the Code of Ethics regards whether an official will impair their independence of judgment in a particular circumstance. She stated that this provision applies when an official "accepts other employment" and noted there is a question here as to whether the petitioner's participation in an appeal before her Board constitutes such a circumstance. Commissioner Cheit commented that he thought this provision applied.

Upon motion made by Commissioner Moran, duly seconded by Commissioner Butler, it was

**VOTED: To issue an advisory opinion, attached hereto, to
Kathleen A. Ward-Bowen, an Exeter Zoning Board of Review
member.**

**AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis,
and Frederick K. Butler.**

NOES: Barbara Binder and Ross Cheit.

The advisory opinion failed for lack of five affirmative votes. For clarification, Staff Attorney Gramitt inquired whether the Commission is awarding the petitioner an opportunity to appear before the Commission to answer their questions. Chair Lynch replied that the petitioner was already afforded such an opportunity today.

The next advisory opinion was that of Robert M. Silva, Esq., a member of the Town of Middletown Economic Development Advisory Committee. Staff Attorney Leyden requested that the Commission delay their consideration of this request as the petitioner informed her that he would be arriving late. Chair Lynch replied that the opinion will be considered after Executive Session.

At approximately 10:07 a.m., upon motion made by Commissioner Binder, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To into Executive Session pursuant to R.I. Gen. Laws § 42-

46-5(a)(1), (a)(2), and (a)(4), to wit:

- a.) Motion to approve minutes of Executive Session held on June 21, 2005.**
- b.) In re: William Devanney, Complaint No. 2005-15.**
- c.) In re: Diane Bampton-Allen, Complaint No. 2005-16.**
- d.) In re: Wayne E. Cross, Complaint No. 2005-17.**

At approximately 10:29 a.m., the Commission returned to Open Session. Chair Lynch reported that the Commission took the following actions in the Executive Session:

- a.) Voted to approve the minutes of Executive Session held on June 21, 2005.**
- b.) Voted that sufficient facts were alleged to support a violation of the Code of Ethics for In re: William Devanney, Complaint No. 2005-15.**
- c.) Voted that sufficient facts were alleged to support a violation of the Code of Ethics for In re: Diane Bampton-Allen, Complaint No. 2005-16.**

d.) Voted that sufficient facts were alleged to support a violation of the Code of Ethics for In re: Wayne E. Cross, Complaint No. 2005-17.

The next order of business was sealing the minutes of the Executive Session held on July 12, 2005. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Moran, it was unanimously

VOTED: To seal the minutes of the Executive Session held on July 12, 2005.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

In response to Chair Lynch, Staff Attorney Leyden informed that petitioner Robert Silva, Esq., had not yet arrived. Chair Lynch replied that the Commission would continue to wait and would hear his advisory opinion request as the last item of the meeting.

The next order of business was the Legislative Update. Staff Attorney Gramitt informed the Commission that he was presenting them with information regarding legislation relating to ethics or that will impact the Commission. He pointed out that most of the bills introduced on this subject did not make it out of committee. He reported on House Bill 5033, which was introduced to repeal the Roney Amendments. He noted that the Roney Amendments regard the frivolous complaint

statute. He also reported that House and Senate Bills regarding changes in the allowable amount of gifts to officials failed to make it out of committee and were rendered moot by the Commission's recent regulatory changes.

Staff Attorney Gramitt also noted that a bill regarding the manner in which Commissioners are appointed almost passed. He stated that Senate Bill 0046 was passed by the Senate and placed directly on the House Calendar, without going to a committee. He informed that this bill required that the appointment of Commissioners receive advice and consent and noted that it likely moved along because of the Separation of Powers initiative. He noted that this bill set forth penalties for failing to make appointments.

Staff Attorney Gramitt also reported on House Bill 6425. He stated that this bill was introduced to amend the Rhode Island Gaming Control and Revenue Act to prohibit a member of the General Assembly from doing business with any gaming casino for five years after leaving the General Assembly.

In addition, he informed that House Bill 5477 regarding the disclosure requirements of lobbyists passed both the House and Senate. He noted that current state law requires lobbyists to list the money they provide to businesses owned by members of the General Assembly. He informed that the Secretary of State passed regulations interpreting the existing reporting law. He noted that this bill creates

an ordinary course of business exception to the state law requirement.

Staff Attorney Gramitt pointed out that the Secretary of State and Common Cause are against this bill, which awaits the Governor's signature. He noted that the Governor may veto it and it is not clear whether there are enough votes to override it. He informed that this bill will impact the Commission because lobbyists may look to us to learn about the business interests of lawmakers because such information exists now in the financial disclosure statements.

Commissioner Butler inquired whether the information about lawmaker's business interests could be obtained elsewhere. Staff Attorney Gramitt responded that he was unsure how such information could be obtained right now except from the Commission's financial disclosures statements.

Commissioner Moran stated that the Secretary of State's Office should assist us with efforts to make this information more easily accessible. Staff Attorney Gramitt expressed his hope that they would offer their assistance and pointed out that the Commission Staff would ask them for help if none was initially extended. Commissioner Moran inquired whether interns could volunteer to do the work. Executive Director Willever replied that the Commission has had interns in the past, although having them here is difficult due to confidentiality concerns.

The next order of business was discussion of the Commission's Regulations. Chair Lynch noted that the Commission Staff is working on their information requests and pointed out that they will take some time to complete. He commented that the Commissioners can still discuss the proposals. In response to Commissioner Segovis, Chair Lynch stated that they are focusing on confidentiality now. Staff Attorney Gramitt reviewed the information that the Commission staff will prepare on this subject as follows: individual amendments will be proposed for each section of the Code under consideration to enhance the confidentiality of complaint proceedings and the staff will look into how other states and agencies conduct their proceedings. He informed that the staff has not yet conducted this research. Commissioner Segovis pointed out that after the Commission considers the proposals on confidentiality, it will look at proposals on the revolving door provision.

The next order of business was the Director's Report. He reported that 35 complaints are pending and that 14 of them are non-filing complaints initiated by the Commission staff. He pointed out that the Commission staff filed complaints against all school committee members and all town council members who had not filed. He noted that all state elected officials and members of the judiciary filed this year. Executive Director Willever also stated that all of the non-filing complaints are finished as Everett Dunn, for which an extension was sought last meeting, settled. He also pointed out that, after this

meeting, that there will be 14 advisory opinions pending. He stated that the goal of the Commission staff is to end the backlog of advisory opinions by the end of the summer so that the Commission staff can eventually answer every request within one month's time.

In response to Chair Lynch, the Executive Director informed that the deadline for attendance at COGEL is October 31st and that he would like to hear from all of the Commissioners by October 1st as to whether or not they would like to attend. He also stated that he needs to know who is attending so that he can ensure there is sufficient funding available to cover the tuition fee and travel expenses. He informed that there will be no funding for hotel and that it will not be necessary as it is in Boston.

Chair Lynch requested that COGEL attendance be placed on the Agenda for the meeting next month so that all of the Commissioners will be made aware of it well in advance. He noted that the Commissioners can carpool to COGEL. Legal Counsel Managhan pointed out that there are two tuition fees based on when you register. Executive Director Willever stated that the earlier date is cheaper and that this is when the Commission will register.

The next order of business was New Business. There was none.

The next advisory opinion was that of Robert M. Silva, Esq., a member of the Town of Middletown Economic Development Advisory

Committee. The Commission delayed this request to give the petitioner time to arrive; however, he did not appear. Staff Attorney Leyden presented the Commission staff recommendation.

Upon motion made by Commissioner Segovis, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert M. Silva, Esq., a member of the Town of Middletown Economic Development Advisory Committee.

AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

At approximately 10:50 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Moran, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary